IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8559 OF 2003

Babulal R. Begrecha ..Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

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Mr. Atul G. Damle for the Petitioner.
Mrs. M.P. Thakur, Assistant Government Pleader for Respondent No.1.
Mr. Sameer R. Bhalekar for Respondent Nos.2 and 3.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

21st March, 2006.

P.C. (**Per DR. D.Y. CHANDRACHUD, J.**) :

A recovery certificate has been issued on 25th June, 2001 under Section 101 of the Maharashtra Co-operative Societies Act, 1960. On 17th September, 2003 the Special Recovery Officer issued a notice of demand seeking attachment of the properties of the Petitioner. The Petitioner has filed an application for setting aside the recovery certificate under Section 101 contending that it was passed ex parte. The Petitioner has been sued in his capacity as a guarantor.

2. These proceedings were instituted on 20th November, 2003 for seeking a declaration that Sections 101 and 154 (2A) of the Maharashtra Co-operative Societies Act are ultra vires the Constitution and moreover that the Assistant Registrar is not entitled to proceed under Section 101 in respect of a claim of a co-operative bank upon the enforcement of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Now in so far as the first issue is concerned, the learned counsel are agreed in stating before the Court that the issue of constitutional validity does not survive since the validity of the Act has been upheld by Division Benches of this Court both at Bombay and at Nagpur in **M/s Annapurna Engineering Corporation v. State of Maharashtra** (Writ Petition 3489 of 2002). The attention of the Court has also been drawn to the fact that the judgment of the Full Bench of this Court dated 12th December, 2003 has been stayed by the Supreme Court in **Greater Bombay Co-operative Bank Limited v. M/s. United Yarn Tex Pvt. Ltd.** (Petition for Special Leave to Appeal (Civil) No.886/2004) on 16th January, 2004. In that view of the matter, there can be no embargo on the steps which have been adopted by the Second Respondent for the recovery of its dues. There is no merit in the Petition.

3. The learned counsel, however, at the hearing of this Petition has sought the liberty of this Court to pursue the application filed before the Assistant Registrar on 17th October, 2003 for setting aside the certificate under Section 101 dated 18th June, 2000 in Recovery Application No.1785 of 2000. The Petitioner, it is clarified, shall be at liberty to take recourse to his remedies under the Maharashtra Co-operative Societies Act, 1960 either by pursuing the aforesaid application as prayed or by filing a revision application under Section 154 in accordance with law. The Petition shall stand dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD,
J.